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# THE OUTLOOK FOR PARLIAMENTARY GOVERNMENT.

BY THE HON. HANNIS TAYLOR, UNITED STATES MINISTER TO SPAIN.

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IN these days of doubt and uncertainty, when the whole social fabric is menaced by the growth of new political theories which strike at the roots of existing institutions, a natural anxiety prompts the thoughtful to inquire whether or no the prevailing system of parliamentary government will be able to ride out the storm which is everywhere rising around it. Despite its marvellous extension during the present century, and the existence of the general belief that it is destined to enjoy an indefinite duration, political critics of the highest order are not wanting who venture to treat it as a mere experiment which may at any time end in failure and disappointment. Sir Henry Maine, after reviewing the short history of popular government in the form in which it now exists, has lent the weight of his great name to the conclusion that so far as the facts of that history go "they do little to support the assumption that popular government has an indefinitely long future before it. Experience rather tends to show that it is characterized by great fragility, and that, since its appearance, all forms of government have become more insecure than they were before." In an article from Prof. Goldwin Smith, entitled "Party Government on its Trial," which appeared in this REVIEW in May, 1892, that eminent writer concluded with the following statement:

"Party government, many of the people who are not politicians are beginning to admit, is on its trial. But we must ask whether elective government is not on its trial also; or, rather, whether elective government, properly so-called, has ever in the case of nations or large constituencies really existed, or can be made really to exist?"

According to those who take a pessimistic view of the future of parliamentary government the two greatest dangers which menace its perpetuity arise, certainly so far as continental Europe is concerned, out of the growth of vast standing armies, which national defence renders necessary, and out of the presence of that ever widening and aggressive element generally designated as Irreconcilables, who declare war upon all existing forms of government, no matter how broad may be the basis of popular suffrage upon which they rest. The history of popular governments shows that their two great adversaries have ever been the army and the mob, which have so often driven them out either singly or in combination. To these older dangers, which have long menaced the parliamentary system from without, must be added that which now arises from within out of the designs of that socialistic element which aspires to win majorities in national assemblies, as now constituted, by the use of the suffrage, and then by means of the supreme power thus legitimately won to inaugurate a revolution which will ignore both the sacredness of contract and the stability of private property.

This dark forecast of the future of popular government can only be met by the assertion that while it may be said to be still in an experimental stage, it is steadily and firmly advancing in the path of historic development along which it is being impelled by the silent and irresistible force of a natural political evolution. The new science of comparative politics has long ago demonstrated the fact that the political institutions of the Aryan peoples, springing from the village community as the germ of organization, have grown and expanded by virtue of law which has made the evolutions of politics scarcely less orderly and progressive than those of the physical world. Political growth seems everywhere to be natural; there is no progress by leaps and bounds; everything matures and ripens through the silent force of custom. Nothing seems to be more certain than the fact that the great dominant forms of government, which at different epochs of the world's history have become universal, or nearly so, have neither appeared nor disappeared through conscious human agency. Each age seems to be dominated and overshadowed by some prevailing form of polity which the irresistible law of growth forces upon the nations whose free agency seems only sufficient to enable

them to modify and adapt it to their own peculiar wants and conditions. In that way, and only in that way, has conscious human agency been able to mould and modify the world-wide processes of political development. Only during marked transitions from one stage of growth to another, generally called revolutions, do opportunities arise for such new combinations of old elements as are generally mistaken for inventions. The student of the science of politics, as now understood, can therefore only regard the existing parliamentary system as a stage in that process of political evolution which has been slowly unfolding itself for centuries; while the practical statesman can hope to do no more than devote himself to the study of the political system which he finds growing upon his native soil with a view to its cultivation and improvement. No speculation can be more barren than that which addresses itself to the impossible inquiry as to the length of time the prevailing form of parliamentary government will probably exist. Those who are really interested in its perpetuity and well-being need only devote themselves to the history of its origin and growth in order to draw from its antecedents a knowledge which will indicate the means necessary to improve its operations.

The fact must be borne steadily in mind that the representative principle was utterly unknown to the ancient world, which never employed representative assemblies. The ancient conception of the state was embodied in the city commonwealth, whose democracy acted through the narrow primary body which met within its own walls, and in which all citizens were expected to be actually present and vote. The citizen who could not be present in person could not vote by proxy; and hence the idea of Aristotle that no free state could exist whose territory was so wide or whose population was so scattered that all citizens could not habitually attend the state assembly. Rome never advanced beyond this primitive system, which was utterly incapable, of course, of concentrating her widely scattered dependencies for political action in one central body. The means for the accomplishment of that great end was first supplied by the Teutonic nations who settled down upon the wreck of Rome, bringing with them, as a part of their political organization, the principle of representation, which has enabled the nations of the modern world to organize representative assemblies which can speak and act for

large bodies of men scattered over vast areas of territory. The political systems of all the Teutonic nations, as they appear to us when written history begins, contain the germs of the representative principle imbedded in the organizations of their local self-governing communities; and in all the settlements made by them on Roman soil a serious attempt was at some time made in the direction of representative government. But the remarkable fact is that in every continental state in which such an attempt was made it ended at last in failure and disappointment. By the sixteenth century every effort made to establish representative government upon the continent of Europe had come to an end. Then it was that the free constitutions of Castile and Aragon were overthrown by Charles V. and Philip II.; then it was that the States-General of France met for the last time prior to their final meeting upon the eve of the French Revolution.

During the epoch which extends from the sixteenth century to that great event pure monarchy became the dominant and overshadowing form of government which impressed itself upon the continental nations. Only in the province of Britain has the system of representative government there established by the Teutonic conquerors had a continuous and progressive existence. Hence, out of the English parliamentary system, planted by Teutonic settlers upon what had been Roman soil, have grown all the representative assemblies of the modern world either through an unconscious process of natural reproduction, or through that of conscious imitation. By virtue of the first process have grown up all the representative assemblies of the United States whose success has done so much to hand on the torch which the mother country has kept burning. From the United States republican and representative principles have passed to all the Spanish-American communities from the borders of Mexico to the Straits of Magellan. No attempt, however, can be made within narrow limits even to summarize the troubled history of those republics which speak a language more widely diffused through the civilized world than any other save English alone. The influence of the United States has also impressed itself to a marked extent upon the politics of Europe. Not until after the English political model had been popularized by the founders of the federal Republic of the United States did its reproduction upon the Continent really begin.

Guizot has said that every great idea which has entered into modern civilization has first passed through France before it has received general acceptance. Certain it is that the English representative system, strengthened by its American experience, never began to make headway among the Continental nations until it was first commended by that school of French thinkers who at the end of the last century began to advocate its adoption. Since then representative assemblies after the English model have been set up in France, in Spain and Portugal, in Holland and Belgium, in Germany, Italy and Austria—in all the European nations, in fact, except Russia and Turkey. With the exception of Greece, Servia and Bulgaria, all the Continental states have adopted the English bicameral or two-chamber system; and they have also copied in some form the English idea of ministerial responsibility to a national assembly. Passing to the Eastern world, a parliamentary *régime* has also been set up in Japan, a circumstance which accounts to a great extent no doubt for its recent advancement. In the light of this vast and rapid expansion of the representative system both in the old world and the new during the present century, it must certainly be regarded as the one dominant and overshadowing form of polity which the irresistible law of political growth has imposed upon the age in which we live. In order to estimate its ability to deal with the mighty problems now forced upon it, and to resist the forces which menace its perpetuity, it is but just to examine it in the light of its most perfect developments as they exist in England, France and the United States.

During the thirteenth century was completed throughout Europe that phase of its political growth generally known as the estate system, which consisted of the division of a nation into definite classes or orders of men, a condition of things out of which arose that type of a national assembly in which each class or order appeared in person or by representatives. While in each country the system has its special or local history, as a general rule, three estates everywhere appear arranged upon substantially the same principle. In France the States-General were composed of the clergy, the nobles, and the rest of the nation as the *tiers état*. In Spain there were three orders, and also in England, where they appear as the clergy, the baronage and commons, and not as often erroneously stated as king, lords and commons. The

English Parliament soon came to consist, however, of two houses instead of three, by reason of special and local causes, which brought the separate representation of the clergy to an early end. The representative chamber was then greatly strengthened in England by reason of the fact that the knights of the shire, representing a class of landed proprietors considered on the continent as lesser nobles, took their places, not in the House of Lords, but in the Commons, with the representatives of the towns. Thus reinforced by a most influential element, the English representative chamber has during a period of more than six centuries been growing in power and influence until it has at last become the dominant force of the constitutional system. Through the growth of its exclusive right to initiate financial legislation, it has finally won the power to control the entire executive administration, a control which it now exercises through that inner circle of the privy council known as the cabinet, which is no more nor less than a committee of the House of Commons authorized by it to carry on the Government so long as it can command a majority of its votes.

This representative chamber which claims the right to speak and act for the English nation has been very slow in extending the right to participate in the election of its members to the main body of the people. The county franchise which was limited in 1430 (8 Henry VI.) to such freeholders as "have free land or tenement to the value of forty shillings by the year at least, above all charges," was never enlarged until the enactment of the great Reform Bill of 1832. This mediæval limitation of the suffrage in the shires was so extended in another form to the municipal electoral system as to bring about a still more sweeping restriction in the cities and towns. Through the results of this disfranchising process the county constituencies were finally overshadowed by the paramount influence of the greater landowners, while the borough constituencies became in the main the property of the crown and the aristocracy. It is said that in 1793, when the members of the Commons numbered 558, a majority of 354 was nominally returned by less than 15,000 electors, but in reality on the nomination or recommendation of the Government and 197 private patrons. To remedy this wretched condition of things was passed the Reform Bill of 1832 under whose operation the electors of the United Kingdom rose to the number of

1,370,793, a total which had swelled in May, 1879, by reason of the Reform Act of 1867, to 2,999,229. The results of the Revolution of 1688 finally established the political supremacy of the House of Commons; the Reform Bill of 1832 transferred the actual control of that house from the titled and untitled landed aristocracy to the English middle classes; the Reform Act of 1867 enfranchising the working classes enabled them to take their places by the side of the middle classes in the control of the governing assembly of the State.

The great change thus brought about in the constitution of the Commons told at once upon the political weight of the hereditary chamber. "Since the Reform Act the House of Lords has become a revising and suspending house," in which great national measures passed by the Commons may be for a time delayed until the nation becomes thoroughly in earnest. Then, when the hereditary chamber definitely refuses to bow to the will of the Commons, it is threatened with annihilation. This abnormal condition of things has brought the English people face to face with one of the most serious constitutional questions with which they have ever been confronted. Despite the fact that they have taught all the world to believe that a parliamentary system, in order to be well-balanced, must consist of two chambers, a great English party is now contending that Sieyès was right when he said that "if a second chamber dissents from the first, it is mischievous; if it agrees, it is superfluous." If this proposition to abolish absolutely the upper house should be accepted, conservative England, the mother of Parliaments with two chambers, would pass at a bound to a radical position which would commit her destinies to a single assembly, armed with full power over the constitution, which it may wield at pleasure. At no previous stage of their history have the English people ever reformed their constitution in that way. Their rule has ever been to so modify and reconstruct old institutions as to bring them into harmony with existing conditions without any violent break with the past. While there is at present no good reason to believe that England will give up the two-chamber system, it is manifest that the House of Lords must be so reconstructed at an early day as to bring it into harmony with modern ideas without an entire annihilation of the hereditary class which still exercises so great an influence upon English public opinion. The only practical



question now is as to the means best calculated to bring about that result.

As constitutional reform is an experiment which should always be made, if possible, in the light of experience, the English can hardly do better than employ the expedient by which the question of a second chamber was happily solved under like circumstances by the Spanish statesmen who drafted the present constitution promulgated in July, 1876. the Spanish Senate as now constituted consists of three elements: the first embracing the greater nobles (the *grandees* of Spain), who are distinguished from the lesser by the possession of a certain annual income from land, the heads of the church, the army, and the navy, together with the heads of certain supreme tribunals, all of whom sit by virtue of their status or office; the second embracing the life senators, appointed by the Crown; the third embracing the senators, elected by the people. By express provision of the constitution the first and second classes when added together shall not exceed 180, the number fixed for the elective senators, a half of whom are chosen every five years or whenever the crown sees fit to dissolve the elective element of the senate as a whole. Twenty years of experience has shown that a senate thus constituted easily adapts itself to all the necessities of a parliamentary system guided by a ministry responsible to a popular chamber. The life senators nominated by the party which happens to be in power when vacancies occur are generally about equally divided. Under such conditions the senate can always be made to respond to the national will through the 180 elective senators who may be thrown upon their constituencies whenever they fail to agree with the majority of the lower house. If the English people resolve to reform the House of Lords upon conservative lines they can scarcely hope to improve upon the Spanish experiment\* which has produced a senate of real power and dignity, a body in which the church and the nobles are well represented, and yet a body which through its appointed and elective elements can be made when occasion requires to quickly respond to the touch of public opinion.

The growth of monarchy in France gradually crushed the life out of all the older forms of popular government, both central

\* Second Chambers embracing hereditary peers, life and elective senators, also exist in Prussia, Bavaria, Cis-Leithan Austria, and Portugal, as well as in many of the smaller German States.

and local, which had sprung from the institutions of earlier times. The States-General, after being kept alive for three centuries (1302-1614) ceased to be called together when they were no longer needed to give sanction to the measures of a ministerial system which so far centralized the provincial administration as to exhaust the vitality of all the older forms of local self-government. What the French Revolution did not destroy was the system of centralized administration which the monarchy had developed; the legislators of the revolution attempted to do no more than reorganize and simplify that system. The Constituent Assembly simply gave order and symmetry to local administration, when in December, 1789, it carved out of the old provinces of France the eighty-six existing departments now divided into arrondissements, each arrondissement being subdivided into cantons, and each canton into communes. As a general rule, the central government is directly represented through appointed officers in every grade of local government under a scheme which renders the entire local machinery responsive to the guiding hand of the ministry at Paris.

Upon this artificial and bureaucratic substructure, with no historical connection with the traditions of the older freedom, have been superimposed the several systems of popular government that have followed each other since the great upheaval at the end of the last century, which substituted the absolute sovereignty of the people for the indefensible sovereignty of the king.

The most hopeful and the most permanent of these experiments is embodied in the existing third republic proclaimed by Gambetta in 1870, when the war was still in progress. As all the world knows, a national assembly chosen by universal suffrage in 1871 to settle the terms of peace with Germany, after performing that function, continued to govern the country provisionally down to February, 1875, when, assuming to act as a constituent assembly, it adopted the present constitution, which, a year later, went into operation. So far as central political organization is concerned, the present French constitution was made strictly after the British model. As in the English system, the supreme powers of the state are vested in two chambers, which have the right to change the constitution without limit when acting jointly as a national assembly. There is no tribunal like the Supreme Court of the United States to pass upon the validity

of national laws ; the only body competent to pass upon the constitutionality of legislation is the Legislature itself. The weakest feature, however, of the system has grown out of the impossible attempt to put a Republican President in the shoes of an English sovereign by making him a mere figurehead entirely dependent upon the ministry, which in France, far more than in England, is subject to the dictation and control of the popular chamber. This decline of ministerial leadership in France seems to have resulted of late years from the assumptions of the Budget Committee of the Deputies which claims the right to dominate and direct the financial policy of the Government. As an eminent American critic has lately expressed it :

"The extraordinary functions which have been arbitrarily assumed by the Budget Committee simply mirror the whole political situation in France. The chamber has undertaken to govern, with or without the leadership of ministers. So capricious, so willful, has it been in its rejection of every minister who would not at once willingly serve its moods, so impatient, indeed, with all ministerial leadership, that almost every public man of experience and ability in France has now been in one way or another discredited by its action; and France is staggering under that most burdensome, that most intolerable, of all forms of government, *government by mass meeting*, by an inorganic popular assembly."<sup>\*</sup>

The instability which results from this unfortunate condition of things in which real and stable leadership is denied both to the president and the ministry can be easily illustrated by a recapitulation recently made by the *Figaro* of all the ministries that have existed in France since February, 1871. From that it appears that there have been *thirty-four* within that time, with an average life of only eight months ; and, including those persons who have gone out of office when partial changes have been made, there have been 201 different ministers. MacMahon governed with eight cabinets, Grévy with twelve, Carnot with ten. This lack of responsible leadership, which is depriving France of that kind of firm and continuous policy which is so necessary for her welfare, is sure to increase with the persistent growth of factions. French republicans will therefore soon be forced to look the fact in the face, that, in constructing the executive power, the framers of their present constitution fell into a fatal error, from which the framers of the constitution of the United States were saved by a circumstance to be explained hereafter. It has been well said

<sup>\*</sup> Woodrow Wilson, *The State*, p. 211.

that the old kings of France reigned and governed ; that a constitutional king of England reigns but does not govern ; that the President of the United States governs but does not reign, while the President of the present French republic neither reigns nor governs. As a protest against this condition of things impossible in a republic, Casimir-Perier sent in his resignation. The inevitable remedy is plain and simple. The President of the French republic must be made like his legitimate brother, the President of the United States, an independent factor in the constitution clothed with real powers and responsibilities.

The ancient illusion that the constitution of the United States sprang from the brains of its framers through a kind of inspiration has long ago been dispelled by the fact that "constitutions are not made, they grow." Transplanted from the narrow confines of an island world into a practically limitless expanse of territory, the old plant has naturally taken on several new forms as the result of its new environment. In that way the political experience of the United States has given to the world two and only two new principles which are of vital importance to the future of popular government. The first is the principle of constitutional limitations upon the legislative power whereby rights become so "vested" that they cannot be overturned in a moment by ordinary representative assemblies,—a barrier against revolutionary and socialistic designs against private property and the sacredness of contract which Europe does not possess. The power of the American Courts, State and Federal, to declare void all legislation passed in violation of such limitations, is nothing but the corollary or necessary consequence of this principle. The second is embodied in the new path-breaking idea, unknown in all previous federal systems, whereby the framers of the Constitution of the United States were able to apply federal law directly to individuals as such instead of to the corporate bodies or States of which they were members. The application of this new principle made necessary the division of the sum of federal power into the three departments, legislative, executive, and judicial. Upon this subject there is also an ancient illusion, still often indulged in by writers of the first class, which should give way to plain historical facts. Somebody who had never read the *Federalist* a long time ago, put in circulation the statement that the framers of our Federal Constitution really believed that

in the English system, which they so closely followed and so perfectly understood, the three powers were actually separate and distinct from each other. Even Prof. Goldwin Smith, in the article already referred to, restates this most improbable assumption as follows :

"The framers of the American Constitution erred plainly enough in taking the legal and Blackstonian version of their British model as practically true, assuming that the King was the real executive, and that the House of Lords was a branch of the legislature coördinate with the House of Commons. They erred in fancying, with Montesquieu, that the executive, legislative, and judicial powers under the British constitution were really independent of each other. Their imitation is impressed with these misconceptions."

The plain answer to this bit of groundless criticism is that it rests upon three serious "misconceptions" of fact. In the first place, Montesquieu perfectly understood and accurately expounded the maxim as to the division of powers in the qualified sense in which it was understood in the English system (See *Spirit of Laws*, bk. XI., ch. 6). In the second place it is certain that "the framers" were under no possible misconception because Mr. Madison, who more than any other man was the father of the constitution, after assuring us that Montesquieu "did not mean that these departments ought to have no *partial agency* in, or no *control* over, the acts of each other," goes on to say that "on the slightest view of the British constitution we must perceive that the legislative, executive, and judiciary departments are by no means totally separate and distinct from each other," a fact which he drove home by an analysis of the state constitutions in which he failed to find "a single instance in which the several departments of power have been kept absolutely separate and distinct," "notwithstanding the emphatical, and, in some instances, the unqualified terms in which the axiom has been laid down."\* In the third place "the framers" did not err in "assuming that the king was the real executive." The fact is, that at the moment they were doing their work he was the real executive; for the moment cabinet government did not exist in England; under the domination of George III. it had passed into eclipse.† As Sir Henry Maine has well expressed it:

"the figure they had before them was not a generalized English king nor an abstract constitutional monarch; it was no anticipation of Queen

\* *Federalist*, No. xlvi., Dawson ed., pp. 334-342.

† This fact has been fully developed by Mr. Bryce in *The American Commonwealth*, and by Sir T. Erskine May, *Const. Hist.*, vol. i., pp. 15-164.

Victoria, but George III. himself whom they took for their model. Fifty years earlier, or a hundred years later, the English king would have struck them in quite a different light."

Thus it was that the framers of the constitution of the United States were saved from the fatal error committed by our French brethren a century later when they attempted to put a Republican president in the shoes of a modern constitutional king. The presidential office in the United States was patterned after that of an executive who actually governed, and the experiment has worked successfully for a hundred years. The only practical inconvenience which the legislative business of the country, now swelled to immense proportions, suffers under the existing system grows out of the want of power upon the part of the American cabinet to appear in the houses upon grave occasions in order to introduce and discuss legislation upon a few vital subjects, in reference to which the President should have the initiative. In an article upon that subject which appeared in this REVIEW in August, 1894, I attempted to point out how that difficulty can be removed by a simple act of Congress, with a corresponding change in the rules, without any organic change whatever in the constitution itself. Under the Swiss federal system, singularly like our own, the ministers who hold for a fixed term possess the right to propose and discuss legislation in the chambers, and if their proposals are defeated they simply go on with their work as if nothing had occurred. The fact has therefore been demonstrated by experience that the advantages of a limited ministerial initiative may be enjoyed without the consequent inconvenience and turmoil which results from too frequent changes of ministries. Not until the American cabinet is permitted to appear at the bar of the houses in order to propose, discuss, and press to a vote certain vital subjects of legislation upon which the interests of the country must always depend, will we come into possession of that all-important business principle which enables every parliamentary government in Europe to concentrate the energy of the legislature at the critical moment upon such pressing matters as should be disposed of, to the exclusion of all other business,—a faculty which our headless and leaderless committee system very poorly supplies.

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